first time to decide the point, and finds itself confronted with a question which has been litigated in but few instances and on which the little law that exists is in a very disordered state. The cases agree that the wife has the primary right of disposal of the body as against the next of kin. In *Larson* v. *Chase,* 47 Minn. 307, 28 Am. St. Rep. 370, it is said: "This (the rule giving the wife the primary right) is in accordance not only with common custom and general sentiment but * * * with reason." *Accord*: 8 AM. AND ENG. ENCYC. OF LAW, 836; *Secor* v. *Secor,* 18 Abb. N. C. 78, noted in 10 Alb. L. J. 70; *Snyder* v. *Snyder,* 60 How. Prac. 368. Beyond this point there is little if any agreement among the cases. One line of cases, supported, it must be admitted, by none too respectable authority, holds that the wife's control is not only a primary right but an exclusive one as well, where no preference is expressed by deceased in his testament. *In re Richardson,* 60 N. Y. Supp. 539; *Secor Case, supra.* These decisions are based upon the analogy of the situation to that in which a husband asks control of his wife's body. In that case there is a well settled rule giving him the power of exclusive control. A second line of cases, admitting the primary right of the wife, considers the possession of the body a sacred trust and holds that in case there be contention, the court is to assume an equitable jurisdiction over the subject and make such disposition as seems to be most equitable in view of all the circumstances. This view is adhered to in *Larson* v. *Chase, supra,* and *Snyder* v. *Snyder, supra,* and is announced as the prevailing rule by 8 AM. AND ENG. ENCYC. OF LAW, 836. It is in general, with this line of cases that the Washington court agrees but there is discoverable no unity among these cases as to what manner of circumstances must be present to secure a decision favoring the next of kin. This court recognizing this chaotic situation is compelled to decide and does decide the case, as it states, upon the particular facts.

EASEMENTS—MERGER—USE BY OWNER OF SERVIENT ESTATE—ADVERSE POSSESSION.—Clore and Mrs. Rice owned adjoining farms. On Clore's farm there was a passway that connected the Rice farm with the turnpike. From 1865 to 1869 Mrs. Rice and her tenants used the way over Clore's land. From 1869 to 1897 Clore rented the Rice land and farmed it, continuing to use the way on his own land as Mrs. Rice had done. In 1897 Flick rented the Rice farm and continued to use the way. In 1899 Clore sold his land to Rogers, who thereafter refused to permit Flick to use the way. Without including the period of Clore's tenancy, the way had not been used adversely for the required statutory period to establish an easement by adverse possession. Flick sued to enjoin interference in the use of the way by Rogers, and for damages. *Held,* that Mrs. Rice and her tenants had used the way continuously since 1865, a period of more than forty years, without asking permission, but under an asserted right; that in ascertaining the period of adverse user, the twenty-eight years during which Clore used the way while tenant of Mrs. Rice should not be deducted, because an easement is not destroyed or extinguished by the union of the dominant and servient estates, unless the fee in both is acquired and united in the same person; and that although Clore

owned the fee in the servient estate, he was only tenant of the dominant estate, and in his use of the road he was exercising that right as tenant of Mrs. Rice and not as owner of his own land. *Rogers* v. *Flick* (Ky. 1911) 139 S.W. 1098.

An easement may be extinguished by union of ownership of the dominant and servient estates in the same person. 1 REEVES REAL PROP., p. 264; WASHBURN REAL PROP., p. 639; *Robb* v. *Hannah's Ex'rs.* 12 Ky. L. Rep. 36, 14 S. W. 360; *Morgan* v. *Meuth,* 60 Mich. 238, 27 N. W. 509; *Denton* v. *Leddell,* 23 N. J. Eq. 64, 66; *Dority* v. *Dunning,* 78 Me. 381, 6 Atl. 6; *Zerbey* v. *Allan,* 215 Pa. St. 383, 64 Atl. 587; *Howell* v. *Estes,* 71 Tex. 690, 12 S. W. 62. This would be true to a limited extent if the possession only of the two estates were united in the same person. So long as possession of both estates continues in the same person the easement is suspended merely and revives upon the expiration of the term for years or for life, as the case may be. 1 REEVES REAL PROP., p. 264; WASHBURN EAS. & SERV., p. 639; *Pearce* v. *McClenaghan,* 5 Rich. L. (S. C.) 178, 55 Am. Dec. 710; *Darity* v. *Dunning, supra; In re Bull,* 15 R. I. 534, 10 Atl. 484. Assuming that an easement was acquired by the user of Mrs. Rice and her tenants, the principal case is in accord with the authorities cited; but can Clore's user of his own land be computed in making the statutory period necessary to acquire such easement by adverse possession? No man can acquire an easement against himself. WASHBURN EAS. & SERV., p. 639; REEVES REAL PROP., § 194, p. 263; *Denton* v. *Teddell, supra; Plimpton* v. *Converse,* 42 Vt. 716. To constitute adverse enjoyment so to give the adverse party an easement in another's land it must be while there is someone to whom such user is adverse. 2 WASHBURN REAL PROP., Ed. 5, 339. Such user must be uninterrupted in the land of another by acquiescence of the owner for the requisite period. 2 WASHBURN REAL PROP., Ed. 5, 337. It must be hostile to the title of the true owner. *Ward* v. *Cochran,* 150 U. S. 597; *Jackson* v. *Berner,* 48 Ill. 203; *French* v. *Pearce,* 8 Conn. 439, 440; *Paldi* v. *Paldi,* 95 Mich. 410, 54 N. W. 903. The very essence of adverse possession is that it be in opposition to the title to which it is alleged to be adverse. *Dietrick* v. *Noel,* 42 Ohio St. 18, 21, 51 Am. Rep. 788; *Farish* v. *Coon,* 40 Cal. 33. There must be no recognition of title in another. *Roggencamp* v. *Converse,* 15 Neb. 105; *Mhoon* v. *Cain,* 77 Tex. 316. So long as the possession is consistent with the title of the real owner it is not adverse. *Morse* v. *Seibold,* 147 Ill. 318, 35 N. E. 369; *Plimpton* v. *Converse, supra.* Tested by the foregoing it would seem that Clore's user of the way on his own land was consistent with his ownership of the land. To say that his possession of both farms will not extinguish an easement *already acquired* is one thing; but to say that his user of the way on his own land, while he was tenant of Mrs. Rice, is hostile and adverse to himself and shall be computed in making up the statutory period necessary to acquire an easement by adverse possession, is another. In this respect the decision in the principal case seems questionable.

HOMICIDE—BURDEN OF PROOF WHEN INSANITY IS A DEFENSE.—Defendant was tried for murder, and convicted of manslaughter in the first degree.